

## **EXHIBITS**

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Exhibit A	Evaluation Committee Member's Confidentiality Agreement
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Exhibit C	January 8, 2019 Text Message Chain – Breach of Confidentiality
Exhibit D	November 19, 2018 Evaluation Consensus Meeting Notes (pp. 1-2)
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**EVALUATION COMMITTEE MEMBER'S  
CONFIDENTIALITY AGREEMENT**

**For**

**RFP # 40-RQ20680730 – Read to Achieve Diagnostics – Software as a Service (RtAD-SaaS)**

Pursuant to North Carolina's Administrative Code 09 NCAC 06B.0103, all information and documentation (verbal and written) relative to development of a contractual document is deemed "confidential" and shall remain confidential until successful completion of the procurement process.

Therefore, Evaluation Committee Members (both voting and contributing advisors) are required to keep all comments, discussions, and documentation confidential until a notification of award has been made by the Issuing Agency for this solicitation. By participating in this Evaluation Committee, you agree to not divulge any information to an unauthorized person in advance of the time prescribed for its authorized release to the public. This includes co-workers, supervisors, family, friends, etc.

If it is discovered that there has been a breach of confidentiality by a member of this Committee, he/she will be immediately excused by the Committee Chair until further notice. The solicitation may be cancelled and a new solicitation may be issued with a new Evaluation Committee.

In addition, the issue will be referred to the employee's department director or agency head. Department directors or the heads of autonomous agencies shall be responsible for the preliminary examination and investigation of reports from employees of any violations which compromise the procurement process. If, following a preliminary examination and investigation, the department director or agency head finds evidence of a violation or finds that further investigation is warranted, a report shall be submitted to the respective Human Resources Office for potential disciplinary action.

**By signing below, I certify that, as a member of this Evaluation Committee, I will keep all comments and discussions, preliminary / working evaluation notes, and all other information (verbal and written) regarding the above referenced solicitation, confidential until after a notification of award has been made by the Issuing Agency.**

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***Signature***

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***Date***

The following organizations have submitted a bid proposal and response to the above solicitation:

Date \_\_\_\_\_

To: [REDACTED]

## Exhibit C

Detail

I don't know how well KC will take it since we haven't done anything for him yet.

I agree...no matter how we try to soften it

Hindsight 20/20- we should have kept the room at Mad Boar

You're exactly right!!

1/8/10, 8:26 PM

Well, just got off another marathon call with [REDACTED] 1 hour 45 minutes all about RFP what a mess!

Geez! What is going on?

MJ came into their voting meeting today to basically (without coming directly out and specifying) tell them how to vote! However the vote did not go his way so it will be interesting to see how he gets his way on this

OMG! I know they were shocked!

Yep, she said they walked out of the building and several people said what just happened?

Someone, [REDACTED] should've recorded it on her phone!

She thought about it but her phone was lying on the table in front of everyone

Oh yeah that would be tough...who else on the team was in the room? Have they named a replacement for [REDACTED]?

[REDACTED] She and [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] voted for children. [REDACTED] and one of Mark's staff voted for helping teachers. She said he talked about helping teachers and never once mentioned children and saving the teachers' time

Ass

The sad thing is, he may win his next race because he will talk about how he helped teachers!

Well that's why he is pushing this. Children can't VOTE so we appease lazy ass teachers

Exactly!

**Read to Achieve 2018 (RtAD) Evaluation Consensus Meeting notes**

Meeting Purpose	Consensus Meeting to rank the proposal vendors
Location	State Board Room, Education Building, Raleigh.
Date & Time	November 19, 2018; 8:30 AM – 5:00 PM & November 20, 2018 8:30 – 2:30 PM
Facilitator(s)	Linda Lowe and Sirekha Viswanathan
Next Meeting	TBD

**Voting Member Participants**

Abbey Whitford	Amy Jablonski	Chloe Gossage	Cynthia Dewey	Kristi Day
Lynne Loeser	Matt Hoskins	Pam Shue	Rebecca Belcastro	Susan Laney
Thakur Karkee				

**Non-Voting Member Participants**

Courtney Moates	Constance Bridges	Deborah Wilkes	Erika Berry	Giancarlo Anselmo
Gin Hodge	Julien AlHour	KC Hunt	K.C. Elander	Linda Lowe
Meera Phaltankar	Mia Johnson	Paola Pilonieta	Shaunda Cooper	Sirekha Viswanathan
Tonia Parrish	Tymica Dunn			

**Agenda Items**

The agenda for this meeting was to discuss the evaluation notes from the independent reviews by voting and non-voting members, reach consensus to rank the proposals and determine the next steps in this procurement.

*This meeting summary includes notes from the meeting on 11-19-2018 and 11-20-2018.*

**Meeting Summary**

**(11-19-2018)**

1. Sri kicked off the meeting by thanking the participants for their thorough review and participation at the consensus meeting.
2. The intent of the meeting and the approach to evaluate all the criteria were discussed - including being objective, impartial, unbiased and fair in all aspects of the evaluation process and arrive at a consensus. All proposals should be ranked consistently. Consensus means general agreement and not unanimity.
3. The six evaluation criteria in proposal were reiterated:
  - a. Substantial Conformity to Solicitation Specifications
  - b. RFP Desired Specification
  - c. Proof of Concept/Demonstration
  - d. Vendor Cost Proposal
  - e. Vendor Relevant Experience and Reference Checks
  - f. Vendor Financial Stability
4. All responsive vendors were evaluated on all six evaluation criteria.
5. To evaluate substantial conformity to specifications the team unanimously agreed to take the following approach:
  - a. Review the legislatively mandated specifications for all responsive vendors.
  - b. Vendors who were deemed substantially conforming to statutory requirements to be further evaluated for all RFP specifications to ideally reach a group agreement and further rank the vendors.

- c. Those vendors that were not substantially conforming to statutory requirements were ranked lower by the team for this evaluation criteria.
6. The following ranking was used for each specification –
- a. “Yes” implies conforms to specifications.
  - b. “No” implies does not conform to specifications.
  - c. “MayBe” implies that the team is unsure about conformity.

Discussion during the consensus meeting is summarized below. The voting members were issued three colored cards – Green to show compliance to specification, Pink to show that the specification was not complied with and Yellow to show Maybe there was compliance. In the case of Maybe responses, further clarifications may occur during negotiation prior to Best and Final Offer (BAFO) submission and Award. Negotiation questions matter for Vendors in the competitive range that are selected for further consideration. The voting members discussed each mandatory requirement in full and arrived at a consensus by showing the appropriate cards. Outcomes from consensus meeting for the various specifications are provided in a separate spreadsheet for each bidder with appropriate strengths and weaknesses.

The proposals were taken up in an alphabetical order for ranking.

## 1. Substantial Conformity to Specifications

### Review of Legislated Specifications

#### Amplify Education Inc.:

##### Business Specification 1:

Describe how the proposed solution directly assesses reading and pre-reading behaviors to support student's learning development at the various grade levels to inform instruction, including any observation-based practices if applicable:

- a. oral language (expressive and receptive)
- b. phonological and phonemic awareness
- c. phonics
- d. vocabulary
- e. fluency
- f. comprehension

**Consensus Ranking:** The voting members were unanimous in their agreement that Amplify complied with this specification. Two of the voting members mentioned that while online versions are available for students with appropriate self-regulation and computer skills; teachers continue to have the option to directly assess/observe students. The voting members were 11-0 Yes on Amplify's ability to comply with this specification.

##### Business Specification 3:

Describe the validity and reliability of the assessment in the following areas:

- a. oral language
- b. phonological and phonemic awareness
- c. phonics
- d. vocabulary
- e. fluency
- f. comprehension

## Exhibit E

Team Consensus Ranking after the Consensus Meeting on 11-19-2018 and 11-20-2018 of Read to Achieve RFP Review														
Consensus Meeting														
Vendors	1. Substantial conformity to solicitation specification		2. RtAD SaaS Desired Specifications		3. Proof of Concept/Demo		4. Vendor Cost Proposal		5 Strength of References		6. Vendor Financial Stability		Phase 1 Calculated Rank	Phase 1 Rank Order
	Rank	Weighted Rank	Rank	Weighted Rank	Rank	Weighted Rank	Rank	Weighted Rank	Rank	Weighted Rank	Rank	Weighted Rank		
Amplify Education Inc.		0		0		0		0		0		0	0.00	
Curriculum Associates		0		0		0		0		0		0	0.00	
Istation		0		0		0		0		0		0	0.00	
NWEA		0		0		0		0		0		0	0.00	

Evaluation Criteria	Weight
1. Substantial conformity to solicitation specification	10
2. RtAD SaaS Desired Specification	7
3. Proof of Concept/Demonstration - Responsive Vendors	6
4. Vendor Cost Proposal	3
5. Strength of References	2
6. Vendor Financial Stability	1





Roy Cooper  
*Governor*

Eric Boyette  
*Secretary of Information Technology  
State Chief Information Officer*

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## **Contract Award Recommendation**

**To:** Andrea Pacyna  
Deputy Chief IT Procurement Officer  
Department of Information Technology

**From:** Tymica Dunn  
Procurement Chief  
Department of Public Instruction

**Date:** June 7, 2019

**Subject:** Contract Award Recommendation  
Read to Achieve Diagnostics - Requisition # - RQ20680730, DIT File #300042

**Reference #:** Request for Negotiations 40-RQ20680730A, DIT File #300042

Enclosed for your review and approval is the award recommendation for Requisition # RQ20680730.

Bids received pursuant to RFN #40-RQ20680730A have been reviewed and an Evaluation Committee hereby requests the Statewide IT Procurement Office to award the contract, as follows:

<b>Description:</b>	Read to Achieve Diagnostics – Software as a Service
<b>Recommended Vendor:</b>	Imagination Station Inc., dba, Istation



<b>Cost:</b>	\$8,405,820 for 3 years
<b>Contract Term:</b>	Two (2) years plus 1 (one) year optional renewals at the discretion of the State
<b>Project Name and Number:</b>	Read to Achieve Diagnostics - 2018 DIT file # 300042

Thank you for your assistance. If additional information is required, please do not hesitate to contact me.

cc: Evaluation Committee  
Patti Bowers, DSCIO  
Glenn Poplawski, DSCIO  
Kathy Bromehead, PMA

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## Section 1: Introduction

The North Carolina Department of Public Instruction posted Request for Proposal number 40-RQ20680730A to the North Carolina Interactive Purchasing System on September 6, 2018. A total of four (4) bids were received; however, the evaluation committee could not reach a consensus and deemed it most advantageous to the State to cancel and negotiate with sources of supply. NCDPI requested and received approval from the DIT DSCIO/Chief Procurement Officer to negotiate.

Request for Negotiations were sent to Amplify and Istation on March 28, 2019 and negotiation meetings were conducted on April 11, 2019 with both vendors at North Carolina Department of Public Instruction.  
DSCIO/Chief Procurement Officer

The purpose of this award recommendation and the resulting contract award is to identify a vendor best qualified to offer services for Read to Achieve Diagnostic Software as a Service solution (RtAD) to meet NCDPI's obligations under state law, N.C.G.S. 115C-83.1, *et. seq.*

North Carolina state law requires kindergarten through third grade students to be assessed with valid, reliable, formative and diagnostic reading assessments. NCDPI is obligated to adopt and provide these developmentally appropriate assessments. The solution must assess student progress, diagnose difficulties, inform instruction and remediation, and yield data that can be used with the Education Value-Added Assessment System (EVAAS).

## Section 2: Evaluation Committee

Name	Title/Agency	Participation Level
Berry, Erika	Senior Policy Advisor, NCDPI	Decision Maker
Craver, Nathan	Digital Teaching and Learning Consultant, NCDPI	Decision Maker
Karkee, Thakur	Psychometrician, NCDPI	Decision Maker
Shue, Pam	Deputy Superintendent of Early Education, NCDPI	Decision Maker
AlHour, Julien	Director - Architecture, Integration, & Quality Assurance, NCDPI	SME
Dunn, Tymica	Purchasing Section Chief, NCDPI	Procurement Officer

Gossage, Chloe	Chief Strategy Officer, NCDPI	SME
Strong, Melissa	State Board of Education Attorney	SME
Viswanathan, Sirekha	Project Manager, NCDPI	Project Manager

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**Role Definitions:**

Decision Maker:	Key business stakeholders evaluating the bid responses.	Voting
Project Manager:	Overall responsibility includes successful initiation, planning, design, execution, implementation, and closure of a project.	Non-Voting
Subject Matter Expert (SME)	Person who is an authority in a particular technical area pertaining to the procurement	Non-Voting

### Section 3: Evaluation Criteria / Methodology

The selection process was conducted using the “best value” methodology authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The evaluation committee met as a group and evaluated the responsive proposals.

The evaluation criteria listed below is in the order of importance:

Evaluation Criteria
Cost
Vendor Financial Stability
Formative and Diagnostic Assessment
Personalized Learning

## Section 4: Timeline

Date	Milestone
March 21, 2019	RFP Cancellation
	Notifications sent to vendors, Request to Negotiate
	Review Period
March 27, 2019	RFP proposals were extended to June 29, 2019 – Clarification 1
April 11, 2019	Negotiation Meeting with vendors
April 17, 2019	Clarification issued to vendors – Clarification 2
April 23, 2019	Clarification response received and shared with evaluation team
April 25, 2019	Evaluation Committee meeting and discussion of proposal strengths and weakness
May 3, 2019	Clarification issued to vendor – Clarification 3
	Clarification response received and shared with evaluation team
May 15, 2019	Clarification issued to vendor – Clarification 4
	Clarification response received and shared with evaluation team
June 4, 2019	Best and Final Offer (BAFO)
June 6, 2019	Award Recommendation

## Section 5: Evaluation of Bid Submission

Proposal response from the following two vendors were considered for further negotiations:

Number	Company Name	Address
1.	Amplify Education Inc.	55 Washington Street, Suite 800, Brooklyn, NY 11201
2.	Imagination Station dba, Istation	8150 North Central Expressway, Suite 2000, Dallas, TX 75206

## Section 6: Vendors

Listed below is a synopsis of each proposal submitted based on the criteria defined in Section 3.

### A. Evaluation Criteria

"Best Value" procurement method authorized by N.C.G.S. §§143-135.9 and 143B-1350(h) has been used for this evaluation. A one step source selection was used. The proposals were objectively evaluated using the evaluation criteria described below.

The evaluation team members did their due diligence and issued clarifications for each proposal before meeting the vendors on April 11, 2019. Strengths and weaknesses were discussed during the evaluation meeting on April 25, 2019.

The following evaluation criteria was used to determine strengths and weakness -

1. Cost
2. Vendor Financial Stability
3. Formative and Diagnostic Assessment
4. Personalized Learning

### B. Cost

The strengths and weaknesses identified by the Evaluation team for the responsive vendors are summarized in the tables below.

Cost		
Vendor	Strengths	Weakness
Amplify	No strengths noted.	1. Amplify submitted two cost offers - one for assessment only at \$4,312,210 (Year 1), \$3,895,210 (Year 2), \$3,883,760 (Year 3) totaling \$12,102,096.08 another

		<p>one for personalized and blended approach to learning at \$11,948,912.75 (Year 1), \$10,934,412.75 (Year 2) and \$10,922,962.75 (Year 3) totaling \$33,806,288.25. The assessment only cost which was considered for this proposal review is significantly higher than Istation's assessment only tool.</p> <ol style="list-style-type: none"> <li>2. The assessment cost of \$8.00 per student is higher than that of Istation and does not include online assessments nor remote student or parent access.</li> <li>3. This cost does not include teacher lessons.</li> <li>4. The assessment is not automated and requires teacher intervention by reading the tests aloud and takes away significant classroom time from teaching.</li> <li>5. Professional Development cost for year 1 is 556,650; however, is limited to training Master Literacy Trainers and NCDPI Consultants. The proposal response did not adequately include strategies for ensuring consistent scoring to evaluate training effectiveness.</li> </ol>
Istation	<ol style="list-style-type: none"> <li>1. Istation submitted two cost offers one for the assessment component only and one for the both the assessment and curriculum components. The cost for the assessment was \$2,751,940 (Year 1) \$2,751,940 (Year 2) \$2,751,940 (Year 3) totaling \$8,255,820. For both the assessment and curriculum was \$9,934,813 (Year 1), \$9,934,813 (Year 2), \$9,934,813 (Year 3) totaling \$29,804,438.</li> <li>2. The assessment cost of \$5.70 per student is less expensive than Amplify and includes more features such as 3,000 teacher directed lessons, remote student and parent access to Istation's iPractice.</li> </ol>	<ol style="list-style-type: none"> <li>1. Solution is not compatible with screen readers or keyboards and will cost extra to ensure compatibility.</li> </ol>



	<p>3. \$76,103 for professional development offers 22 onsite trainings, 14 recorded live webinars and 10 virtual teacher trainings annually, in addition the vendor will provide up to 5 additional onsite and 10 recorded webinars annual at no additional cost.</p> <p>4. Vendor will provide additional professional development beyond these allowances at a rate of \$5,800.00 per day of professional development and \$550.00 per webinar.</p> <p>5. The cost for Professional Development also covers the logistics which includes securing learning facilities, paying the cost to host the training, coordinating training dates, communication to participants etc.</p>	
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### C. Vendor Financial Stability

The strengths and weaknesses identified by the Evaluation team for the responsive vendors are summarized in the tables below.

Vendor Financial Stability		
Vendor	Strengths	Weakness
Amplify	NCDPI Financial Director finds no going concern.	None
Istation	NCDPI Financial Director finds no going concern.	None

### D. Formative and Diagnostic Assessment

The strengths and weaknesses identified by the Evaluation team for the responsive vendors are summarized in the tables below.

Formative and Diagnostic Assessment		
Vendor	Strengths	Weakness
Amplify	<ol style="list-style-type: none"> <li>1. Assessment covers all five areas of early literacy which is mandated by law. The service has the capability to appropriately assess K-3 students.</li> <li>2. Amplify Service has enough item pool for 20 assessments (i.e., number of items that are aligned to NC standards which will be enough for 20 tests). It is also to be noted that Schools have three tests per grade level for this age group.</li> <li>3. The reports are easily understandable. Home Connect Letters for parents is clear. There are multiple reports for teachers about instruction and areas that need intervention.</li> </ol>	<ol style="list-style-type: none"> <li>1. Benchmarking and progress monitoring per student per grade level consumes a lot of time and requires excessive teacher involvement to manually administer and enter test results. The fixed form manual test takes more time testing to find where the students are at. This takes away significant instructional time.</li> <li>2. The \$8 option is not adaptive i.e., it does not measure student's exact level of achievement. It was difficult to gauge from the proposal response how the service adapts when students gain mastery.</li> <li>3. The fixed form tests don't always provide feedback on the student's exact level of achievement which brings to question the effectiveness of the data driven instructional support.</li> </ol>
Istation	<ol style="list-style-type: none"> <li>1. Adaptive assessment (also known as Computer Adaptive Assessment) allows students to reach their full potential. This assessment measures student's mastery with the minimal amount of teacher time.</li> <li>2. The aggregate reports for teachers are easy to read and interpret.</li> <li>3. Istation has enough item pool for 10 assessments (i.e., number of items that are aligned to NC standards which will be</li> </ol>	None

	<p>enough for 10 tests). It is also to be noted that Schools have three tests per grade level for this age group.</p>	
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## E. Personalized Learning

The strengths and weaknesses identified by the Evaluation team for the responsive vendors are summarized in the tables below.

Personalized Learning		
Vendor	Strengths	Weakness
Amplify	<ol style="list-style-type: none"> <li>1. Personalized Learning was only offered in the Alternate Cost proposal which came with increased pricing.</li> <li>2. Progress Monitoring when a student is identified as at risk for achievement, is at individual skills level.</li> <li>3. Amplify offers a dyslexia component.</li> </ol>	<ol style="list-style-type: none"> <li>1. The basic cost proposal offered does not have all aspects of personalized learning and is not computer adaptive.</li> <li>2. Progress Monitoring for students at risk requiring intervention takes up a lot of time for teachers. The basic assessment solution option is not computer based it is takes away significant instruction time from teachers and the reliability and validity of results vary significantly.</li> <li>3. Home Reading is not included in the bid offering. This limits the ability for students to have access to resources outside of school which limits their learning and the participation from parents.</li> </ol>

Istation	<ol style="list-style-type: none"> <li>1. The assessment is computer adaptive and caters to the individual student's need.</li> <li>2. The time for assessment offered by Istation is 40 minutes/student and is fully online (i.e., teacher can work with other students in class while a group of students are taking the assessment) . Amplify's assessment is 45 minutes/student on the low end and requires teachers to spend time with the students while they are being assessed. The reduced assessment time and the fact that the teacher does not have to be with students who are being assessed (using the computerized model) allows teachers more time to support student's individual needs.</li> <li>3. Istation allows students see their own academic need and take responsibility for their learning by providing feedback after each subtest. This feedback is available to students, parents and teachers. Further students are allowed access outside of school. They can personalize their learning by choosing games and activities to further enhance their learning.</li> </ol>	<ol style="list-style-type: none"> <li>1. Although Istation stated that their assessment can be used to screen for dyslexia, the vendor does not have a separate dyslexia component at this time.</li> </ol>
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## Section 7: Finalist Vendor(s)

NCDPI entered into negotiations with both vendors. Each vendor was given the opportunity to present their assessment solution and how it would best meet the needs of the department.

Clarification 1 was issued to both vendors extending their RFP bid submission as the proposal response was used in the negotiation process.

Clarification 2 was issued to both vendors prior to the negotiation meeting. The question provided in this request were focal points during the meeting. This clarification request also gave the Evaluation Team some guidance and understanding with both vendor offering. After the negotiation meeting held on April 11, 2019 the team unanimously agree to continue further negotiation efforts with Istation.

Clarification 3 Istation was asked by NCDPI to provide the cost of both the assessment and curriculum. This request was to compare the Alternative Cost proposal 2 submitted by Amplify which included the curriculum portion. After reviewing Istation's submission the team agreed to go with only the assessment portion which is required in legislation. While there was interest in the curriculum offering it is not required in the law.

Clarification 4 was issued to negotiation on the Terms of Use and Privacy policy that Istation has in place. NCDPI's legal team negotiated the language that was provided by Istation. Istation was in agreement and signed the clarification giving the department permission to incorporate in in the final contract offering.

While Amplify was able to submit an offer to satisfy the agencies needs it was not cost effective. As the incumbent the progress made by students in reading is not significant. The effectiveness of the data driven instructional support is questionable. The current test scores does not support the inflated cost offered by Amplify.

Istation provided a solution that was robust, cost effective, offered additional enhancements that were required, and met the business needs of NCDPI. While Istation's dyslexia component may be missing key measures, the service substantially conforms to the requirements specified under N.C.G.S. 115C-83.1, which is the primary obligation of this procurement.

Negotiations were issued to Istation and memorialized in the BAFO # 40-20680730A dated June 4, 2019 in which Istation agreed to the following change in specifications: ADA Compliance high contrast reports, Voice Recognition Software, Onsite Training and

Recorded Webinars, Growth Calculation, Summer Reading Camps, Customizations and Enhancements, BAFO Cost, as well as modifications to the Istation Terms of Use and Privacy Policy which comprise the License grant and agreement for the State's use of the Istation Resources.

Istation also completed the Vendor Security Assessment Guide (VRAR) that was reviewed and approved by NCDPI and DIT technical teams.

## Section 8: Award Recommendation

The Evaluation Committee has determined that Istation's bid substantially conforms to the specifications and requirements of the law and therefore, recommends award RFP No. 40-RQ20680730A to Imagination Station Inc. (Istation) in the amount of \$8,405,820 (Year 1 - \$2,751,940, Year 2 - \$2,751,940, Year 3 - \$2,751,940) for 2 years with the option of one (1) additional one (1) year renewals.

## Section 9: Supporting Documentation

The following supporting documents that reflect the vendor selection are included:

1. Bid Response -
2. Clarification documents –
3. Signed BAFO document
4. Hosting Exception and Privacy and Threshold Analysis (approved by DIT)

## **Exhibit G**

On a scale of 1-5 stars, with a 1 being not very helpful, and a 5 being very helpful, rate how helpful you feel Istation's ISIP assessment will be for you and your campus:		What is a favorite take-away from today's workshop?		What district are you with?
Response	Please indicate why you made this rating. Thank you!	Open-Ended Response	Please explain why you chose your selection:	Open-Ended Response
	Once we get familiar with the assessment, I think it will be great. It is the steep learning curve in the transition process with tight window to receive training the week before teachers report back to work.	There is a national team of folks supporting iStation and the company has rolled out state implementation. The numerous resources in the TOOLBOX to support teachers.	The training was engaging where new information was presented in small sections and then time to process with iStation coach to answer questions and address implementation questions. Our district was represented by 13 teacher and 2 district office staff left the training with our questions addressed and feeling VERY comfortable about the product. We just need time to now play in the system to practice and become familiar with the product.	Lincoln County Schools
5	Sarah Cude and her team was very energetic and passionate about ISIP and her enthusiasm is contagious :)	I think the Teacher Resources will be well-received :)		Gaston County Schools
5	Great presentation. Gave takeaways to get us started.	Teacher Resources	I think this will be an upgrade from Mclass	Charter School
5		the model		Charlotte Mecklenburg Schools
5		The resources in the teacher toolkit		Charlotte Mecklenburg Schools
5	knowledgable, with a good understanding of the varied experiences in the room.	good reminder of the resources available.		MGSD
5	Lots of resources for teachers.	Learning about all of the components.	It is a lot of information to take in at one time.	MGSD
5		Toolbox	Thank you Sarah for all of your energy. You made the 4 hours fly by.	Casa Esperanza Montessori Charter School
5		An overview of the program.	I just have to get in there and use it for real to feel comfortable with it. I think once we get through a few months, we will all feel better about it.	Cleveland County
5	Lots of helpful information but a lot of new information at one time.	I valued the positive presenters and understanding a bit more the subtests.		Charlotte-Mecklenburg
5	Examples, time to generate questions and reflect on subtests then discuss with Istation coach	examples of the subtest- skills assessed and the resources to support and adjust instruction	Thank you for your support guidance and help ease the transition of to Istation.	Kannapolis City School
5	Very candid and helpful	better understanding	great workshop	Kannapolis City Schools
5	Seems like a good, reliable assessment with good reports to help inform instruction.	How the assessments work.		Union County
5	It was very informative and helpful in learning this new assessment tool.	learning the new Istation assessment tool		Lincoln County Schools
5	I really can see the benefits in using this. One of the biggest struggles is making use of common language across staff, parents, and students.	The ability for there to be a Parent Portal!!!	I would like more detailed PD on how to read more in detail reporting.	Lincoln Charter School
5	great data info	teacher resources and data reports		Lincoln County
5	I feel it will be very informative and I love that lessons are easily found in the teacher resources.	Love the intervention lessons to help my students grow!!!	I believe this will be a very informative piece to help me be a better teacher.	Lincoln County



5	It has a huge database of resources and many different reports to aid in determining what students need to focus on.	The demo and looking at the assessment and data.	It was a lot of information. I need to navigate through it and may have questions later.	Sugar Creek Charter School
5		Lots of good information.		Union County Public Schools
5		the detail look into the assessments		Charter
5	Istation seems very user friendly and I am excited that my teaching staff will be able to spend more time in their classroom.	the recording of ORF.		Gaston Co Charter School
5		importance of action-taking after formative assessment - continuous data cycle	I would prefer more guided instruction to walk me through the reports, versus having to self-discover what they all mean and tell me.	Queen's Grant Community School
5	I am looking at change in a positive light, we are here to help the children.	Teacher Toolbox	NA	Lincoln County
5		all of the knowledge and hopefully the easy of transition from mClass		UCPS
5		Understanding what Istation is.		Avery
5		More time given back to teacher's to instruct!!! And I am so glad I brought my jacket....the room is freezing!!		Gaston
5	It will be a big improvement to be able to have students tested at once rather than one on one.	Computer scoring for student read aloud.	The specialist (Julie) was very helpful. Engaging and informative presenters. Thank you!	Charlotte-Mecklenburg Schools
5	Valid testing will provide formative data to better instruct. This way teachers can focus more on instruction than assessing.	ORF!!	Any new program needs repeated facilitating.	Gaston County Schools
5	Presenters have used Istation in their own classrooms.	Enthusiasm of how to use the Program in the best way to drive instruction	Using reports, resources	Mountain Island Day
5	Very clear with small group and hands on time	Very clear with small group and hands on time		Stanly County Schools
5		coaching		Charlotte Mecklenburg Schools
5		The data and resources available.		Mountain Island Day Community Charter
5	I think the ISIP will help with not losing instructional time and help with fidelity.	The video training and the view cards teachers can do and pass.	Very excited about IStation	Concord Lake STEAM Academy
5		Great information in a hands on format.		Union County Public Schools
5	5 - Training was very helpful due to not knowing much about Istation.	There's a lot of resources available for teachers to help students grow.		Union County Public Schools
5		Teaching time freed up for students due to shorter time needed for testing.	great presenters and support throughout the training session	Union
5	This will be a big time saver for teachers and allow them to focus more time on instruction.	Teacher Resources		Iredell-Statesville
5	The reports will be helpful and the site is easy to follow. There are many resources which will be great when organizing groups and monitoring student growth,	All of the resources and the top two things needed when training teachers.	It is a lot of information, but I feel that there are many resources I can use if I need help moving forward.	Movement Charter School
5	I feel that it will be helpful to see very targeted data for each student.	I enjoyed learning about the Teacher toolbox and other resources available to us.	I feel that I have a good initial understanding of the overall program and will learn more as I get familiar with iStation.	Gaston County Schools
5		This will provide very granular data that teachers can review. The intervention resources will provide a great tool for our intervention and progress monitoring.	I was able to get answers to questions I had. Today provided a great deal of clarification to move forward.	Mountain Island Charter School

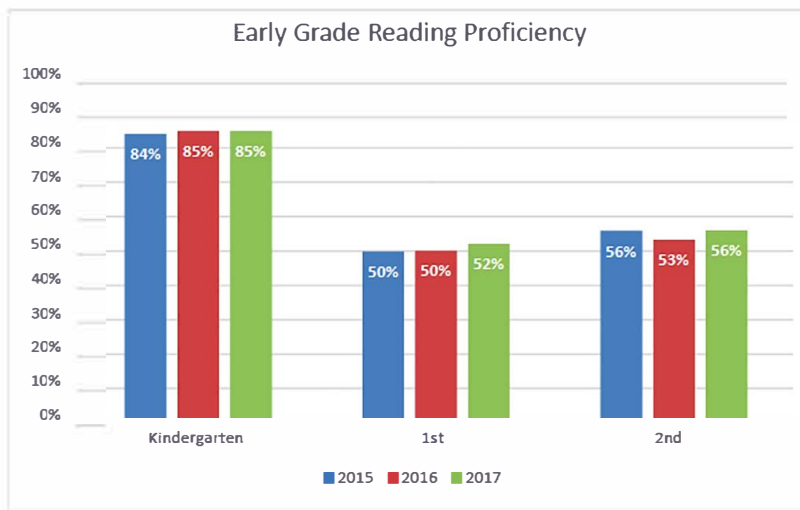
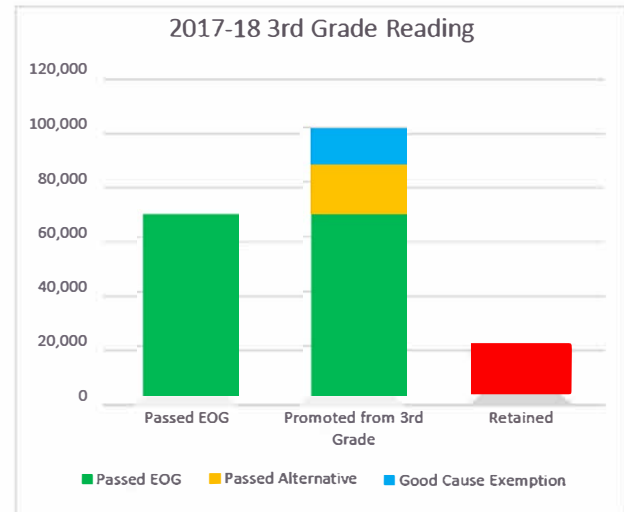
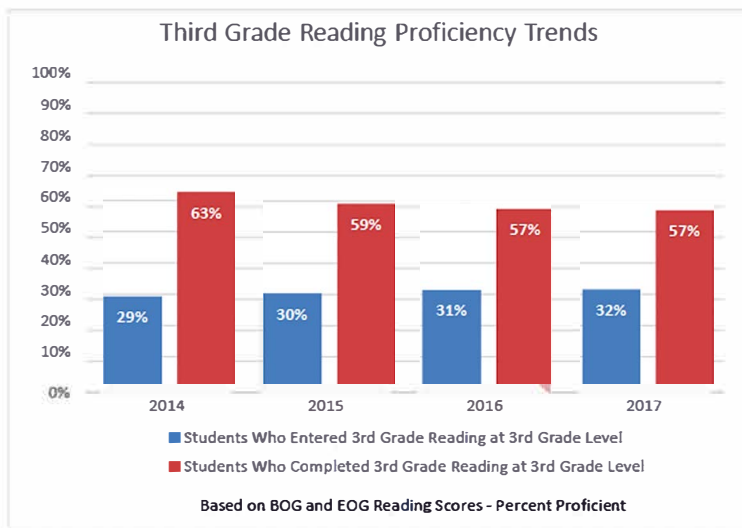
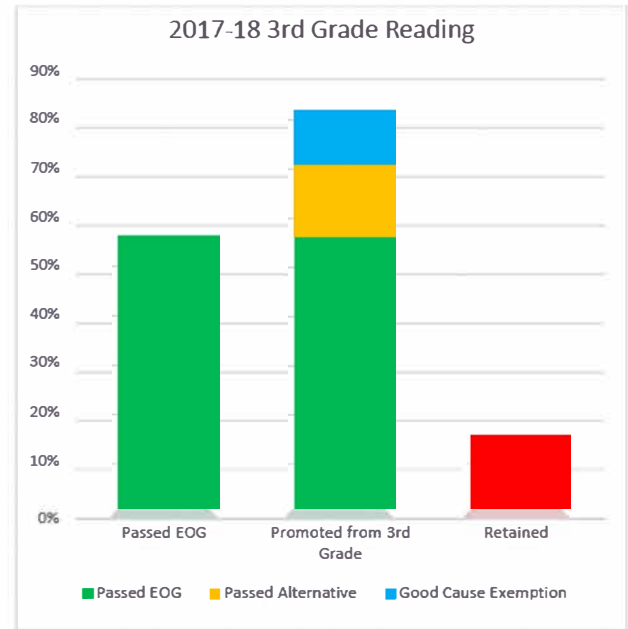
5	Pacing and overall climate of information	The intervention resources	It is very similar to MClass so a lot of the information is the same. This made it easier to learn.	Movement Charter
5	I can go back and get teachers started with ISIP.	Teacher Resources		Iredell-Statesville Schools
5		Orf assessment		A.c.e academy charter
5	Graet training with great resources.	Most of it is adaptive and can be tailored to student needs.	Because I did learn a lot and feel more prepared to support teachers with Istation.	Charlotte Mecklenburg Schools
5	The presentation of the 3 segments was well planned and presented. The information provided will help us get started. The Istation website was easy to maneuver. Support and resources have been provided.	Support and resources are available.		Union County
5		great information	Thanks so much!	Gaston County
5		Resources		Union County Public Schools
5	The presenters are very knowledgeable and helpful.	I really like the tier 1, 2, and 3 activities for each skill		Cleveland County Schools
5		I like how Istation is quick. I love the listening and speaking portion of the assessment. This will help our English learners.		Charlotte Mecklenburg Schools
5	Everything was very detail and thought out.	The steps to use to get my teachers started		Ace academy
5	The training was broken down in sessions so we could go back and train teachers.	The teacher resources.		Stanly County
5		I think this assessment is great		ACE Academy Charter
5		Teacher Resources and recorded oral reading.	Thank you!	Gaston County
5		The amount of resources available	This seems like a very useful resource.	Gaston County
5		I love models to practice and demonstrate how to use the program.		Stanly County
5	This will help our teachers adjust instruction for their students.	I was concerned about the oral reading fluency but feel better that there have been measures taken to make sure all students are monitored accurately.	I have a more positive outlook towards implementing this program.	Lake Norman Charter
5		The positive energy of the presenters.		Hickory Public Schools
5		Lots of resources		Wilkes
5	Once we are comfortable with all the features and are able to change the mindset surrounding the way assessing has been done for the past several years, it will be great.	The cape! I am also so glad that you all shared some ideas for getting teachers and students excited about Istation.	I know that I will need to spend much more time exploring myself before I will be able to share with teachers.	Wilkes County Schools
5	Looks to be a very thorough program!	The teacher toolbox		Caldwell County Schools
5	The scale of 1-5 is visible as a U with an S. My opinion is a 5	Practice in small groups not just whole group modeling.	I learned many important details today that I did not learn with our Spanish implementation.	Union
5		Student intervention history	Great ideas for teachers!	Bertie
5		The reports are very comprehensive..		Richmond County
5	data tracking, limiting assessment time, clarifying the ORF and how that will work to put teachers at ease, hearing from teachers as our trainers.	reports, teacher resources, and intervention tracking - tied for first!	this was very helpful. It was a lot of information but I feel once I can get into the site and play around more hands on, I will be ready to train our teachers and get them comfortable. Thank you.	Union Academy

5	Presenters were well informed and although all details were not quite worked out...this is what normally happens so it was just par for the course.	Online resources.	I learn best by doing...PowerSchool was down so I was unable to practice with the online ancillaries.	Guilford County Schools
5	Session was very informative	The program will allow more instructional time for teachers.	All needed questions were addressed.	Vance County
5		options. we love options	Once I have a chance to think, I may have some questions.	Rutherford County
5		teacher led lessons and tools	I do feel better about this after this training. I was not excited about another new program.	Guilford County Schools
5		Over view of Istation	I would like to have a complete presentation to share with teachers.	Rutherford County
5		Easy, intuitive program for teachers and students.		Swain
5	The visuals and help button will be a huge asset.	Being able to see what it's about really help ease my anxiety.	It learned a lot and it was really helpful.	Montgomery
5	They answered all our questions and eased or fears.	That you can get priority reports.	They were very explicit in explaining directions.	Montgomery County
5	There are lots of resources for teachers, I station will give teachers more time to each instead of assessing.	I think the information on student Tiers will be helpful with the MTSS process.		Montgomery County
5	The resources given and the presentation will be very helpful.	Recording and self grading fluency assessment.	I feel excited to share with teachers how useful and efficient these tests will be to benefit teachers and students.	Montgomery County
5	So many questions answered. Anxiety about the change decreased greatly.	Padlet to deliver district PD.		Montgomery County
5	I think the ISIP assessment will help us address interventions and how to group students.	I love both of the reports that were shared today. The summary and priority report will help us provide better instruction for our students.	I learned a lot and all my questions about the program were answered.	Montgomery County
5	This will be another great tool to help us analyze individual student data in order to provide instruction to meet those needs.	I was very concerned that our students would be sitting in front of a screen completing lessons and that there would be less teacher directed instruction. I am relieved that NC will utilize IStation for assessments/progress monitoring and teacher directed instruction only.	I feel much more at ease because of the way the information was presented today and that we will have access to podcasts and webinars all along the way.	Montgomery County
5	The amount of data is great!	The simplicity of the platform and the amount of data. Sorry, that's two take-aways.		Chatham County Schools
5	Trainers were knowledgeable and respectful.	The Oral Reading Fluency Assessment! I'm excited about this!	I came in WANTING to love this, and I'm excited about it's launch. I had a lot of regarding this online program coming in, but I'm ready and informed!	Durham Public Schools
5		The people :)		ABSS
5	Provides comprehensive information related to the screening of foundational reading skills	Positive energy and the padlet resources		Craven
5	I think it's going to be a great tool that will allow for more teaching time while still getting the important information that leads instruction.	adaptive testing!! love the fact that readings are recorded and takes away the subjectivity from scoring	It seems like an amazing program overall! Looking forward to being able to play around with the program and see what's it's all about.	Durham Public Schools
5		A better understanding of how teachers can use Istation as a formative assessment tool		Warren County Schools

5	I think the presenters did a great job introducing the material. They seemed limited by specifics that our state will need to figure out quickly and handled the hot seat amazingly well with professionalism.	There is a support network that seems very accessible	I see a great deal of promise with the program that I didn't initially - I see less room for teacher error and more transparency with many aspects of the assessment.	Durham Public Schools
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2017-18 3rd Grade Reading	Passed EOG	Passed Alternative	Good Cause Exemption	Total Promoted
Passed EOG	68,397			
Promoted from 3rd Grade	68,397	17,991	13,198	99,586
Retained	18,901			
Total	118,487			
Total Spring membership (de	121,567			
(Same Data in % of 3rd Graders)				

2017-18 3rd Grade Reading	Passed EOG	Passed Alternative	Good Cause Exemption	Total Promoted
Passed EOG	56%			
Promoted from 3rd Grade	56%	15%	11%	82%
Retained	16%			



**Exhibit I**

<b>STATE OF NORTH CAROLINA</b>  <b>DEPARTMENT OF PUBLIC INSTRUCTION</b> <b>(NCDPI)</b>	<b>REQUEST FOR BEST AND FINAL OFFER NO.</b> <b>40-IT00107-16 / BAFO 3</b>
	<b>Offers will be received until:</b> July 21, 2016
	<b>Issue Date:</b> July 19, 2016
<b>Refer <u>ALL</u> inquiries regarding this BAFO to:</b>  Mike Beaver Michael.beaver@dpi.nc.gov 919-807-3683	<b>Commodity Number:</b> 920
	<b>Description:</b> Read to Achieve Diagnostic Software as a Service
	<b>Using Agency:</b> Department of Public Instruction
<b>See page 2 for mailing instructions.</b>	<b>Requisition No.:</b> RQ19195897

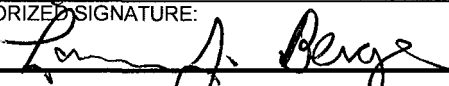
**NOTICE TO VENDOR**

Offers, subject to the conditions made a part hereof, will be received at this office, 301 N. Wilmington Street, Raleigh, NC 27601 until 3PM ET on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Bids submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO 3) will not be accepted. Bids are subject to rejection unless submitted on this form.

**EXECUTION**

In compliance with this Request for Best and Final Offer (BAFO 3), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud.

**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

<b>OFFEROR:</b> Amplify Education, Inc.		
<b>STREET ADDRESS:</b> 55 Washington St., Suite 900	<b>P.O. BOX:</b>	<b>ZIP:</b> 11201
<b>CITY &amp; STATE &amp; ZIP:</b> Brooklyn, NY 11201	<b>TELEPHONE NUMBER:</b> 212-796-2200	<b>TOLL FREE TEL. NO</b> 800-823-1969
<b>PRINT NAME &amp; TITLE OF PERSON SIGNING:</b> Larry Berger, Chief Executive Officer, Amplify Education, Inc.		<b>FAX NUMBER:</b> 212-796-2311
<b>AUTHORIZED SIGNATURE:</b> 	<b>DATE:</b> July 20, 2016	<b>E-MAIL:</b> bids@amplify.com

Offer valid for ninety (90) days from date of offer opening unless otherwise stated here: \_\_\_\_ days

**ACCEPTANCE OF OFFER**

If the State accepts any or all parts of this offer, an authorized representative of the Department of Public Instruction shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, BAFO 1 and BAFO 2; any provisions and requirements of the original RFP which have not been superseded by this BAFO, BAFO 1, and BAFO 2; and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful vendor(s).

<b>FOR NC DEPARTMENT OF PUBLIC INSTRUCTION USE ONLY</b>  Offer accepted and contract awarded this ____ day of _____, 20__, as indicated on attached certification, by _____ (Authorized representative of NC Department of Public Instruction) State Superintendent of Public Instruction  by _____ (Authorized representative of NC Department of Public Instruction) Chief Financial Officer

**Instructions:** **Sealed offers**, subject to the conditions made a part hereof, will be received at the address below, for furnishing and delivering the goods, software, and/or services as described herein.

**DELIVER TO:**

RFP 40-IT00107-16 BAFO 3  
Department of Public Instruction  
Attn: Mike Beaver  
301 N. Wilmington Street, Room B04  
Raleigh, NC 27601

It is the responsibility of the Vendor to deliver the offer in this office by the specified time and date of opening, regardless of the method of delivery. Address envelope and include RFP number as shown above. Vendors are cautioned that offers sent via U.S. Mail, including Express, Certified, Priority, Overnight, etc., may not be delivered in time to meet the deadline.

Deliver one (1) signed original executed offer, one (1) copy of the executed offer response, and one (1) signed, executed electronic copy of its offer on a USB Flash Drive or read-only CD/DVD(s). The files must not be password-protected and must be capable of being copied to other media. Offers submitted via facsimile (FAX) machine, telephone or electronically in response to this will not be accepted.

**SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO)**

This request is to acquire a best and final offer from Vendor for Read to Achieve Diagnostic Software as a Service. The offer should integrate the previous response to the RFP, BAFO 1, and BAFO 2 and any changes listed below. Any individual vendor can receive a different number of requests for BAFOs that other offerors.

**NOTE:** This bid is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of the Department of Information Technology (DIT) IT Strategic Sourcing Office, and to agencies responsible for participating in the evaluation. Bidders who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

**1. The State offers the following with regards to Section VII of the RFP:**

**Negotiated Terms and Conditions**

The Parties agree that Section VII. of the RFP, Department of Information Technology Terms and Conditions, is replaced in its entirety with the following negotiated terms and conditions and these terms replace any proposed Vendor Terms and Conditions:

**VII. Department of Information Technology Terms and Conditions**

**1. DEFINITIONS:**

a) "Agency" means the agency identified in this solicitation as the Purchasing Agency or Award Authority.



b) "Data" means recorded information, regardless of form or method of recording.

c) "User" means user(s) from the Agency along with all current and future North Carolina Local Education Agencies (LEAs), Charter Schools, Regional Schools, Educational Services for the Deaf and Blind Schools (ESDB), and other public schools as the need may arise (individually or collectively).

d) "Services" means the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including access to and use of the Vendor's Web-based Software Application.

e) "State" shall mean the State of North Carolina, the Department of Information Technology as an agency, or the Agency.

f) "Support" includes updates, upgrades, maintenance and support Services conducted by the Vendor on its own Web-based Software, and consulting, training and other support Services provided by or through Vendor for the State.

g) "Web-based Software Application" shall mean the Vendor software applications residing or provided on the Vendor's system and accessed and used by authorized State and Agency End Users through a web browser and shall include Vendor-hosted storage, databases, related documentation, and other functionalities or Services provided by Vendor to facilitate the use of the Vendor's Services.

## **2. ACCESS AND USE OF SERVICES:**

a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, during the term(s) of this Agreement and paid subscription, for the number of Users agreed or as may be agreed, all Services furnished or accessible under this Agreement. The State may access and use the Services as agreed herein. The State is authorized to access Agency Data and Vendor provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support from Vendor without the Vendor requiring a separate maintenance or support agreement. The State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State; provided that the State acknowledges that devices recommended by the Vendor are set forth in D.2.1, Table A: Business Specifications of Vendor's response to the RFP. User access to the Services shall be routinely provided by the Vendor or as may be further specified in a Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor immediately of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its usual and governmental functions. If the Service fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: NCGS § 132-1, *et seq.*

b) The State's license for the Services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this section will not be construed as a sale of any ownership rights in the Services unless, and only to the extent, Custom Services are being developed as a Work for Hire in response to the State's solicitation documents. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or other party, respectively. Vendor has a limited, non-exclusive license to access and use the

State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.

c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services provided hereunder during the State's normal business hours unless otherwise specified herein. Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's customers. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

d) Successful access by the State's users to the Vendor's Services is required. The Agency shall notify the Vendor in writing within ten days that the Agency's Users cannot successfully access the implemented Services. Final acceptance is expressly conditioned upon such successful access and other requirements as specified herein.

e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.

f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States and the security provisions referenced herein are complied with. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.

g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with industry standards. An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.

h) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

### **3. WARRANTY OF NON-INFRINGEMENT; REMEDIES.**

a) RESERVED

### **4. ACCESS AVAILABILITY; REMEDIES:**

a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed to in the SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.

b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term

without cost to the State. If the Services monthly availability averages less than the agreed upon percentages (excluding agreed-upon maintenance downtime) set forth in the SLA for three (3) or more months in a rolling twelve-month period, the State may terminate the Agreement for material breach in accordance with the Default provisions herein below.

## **5. EXCLUSIONS:**

a) Except as stated in Paragraph 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.

b) The warranties provided in Paragraph 4 do not cover repair for damages, malfunctions or service failures caused by:

- i) Actions of non-Vendor personnel;
- ii) Failure to follow Vendor's operation or other written instructions relating to the Services provided to the State;
- iii) Force Majeure conditions set forth hereinbelow;
- iv) The State's sole misuse of, or its own inability to us, the Services.

**6. PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1318(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include:

a) The availability percentages, response time metrics, credits, and other applicable service level provisions set forth in the SLA; and

b) The project management specifications set forth in Attachment A to the RFP and Attachment B, Table D to the RFP, as such specifications are amended by BAFO 1. For clarity and notwithstanding the proposed Project Timeline and Project Plan set forth in Attachment A to the RFP, the Parties acknowledge that the final timeline and project schedule shall be agreed between the parties promptly upon execution of this Agreement.

The Services herein will be provided consistent with and under the foregoing Services performance guarantees.

## **7. INTELLECTUAL PROPERTY INDEMNITY**

a) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; In any event damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

b) If any Services supplied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at

its option and expense, either procure for the State the right to continue using the Services, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Services, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.

c) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Services, or from the continued use of the Services after receiving notice they infringe on an intellectual property right of a third party.

## **8) LIMITATION OF LIABILITY**

a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

b) The Vendor's liability for damages to the State arising under the Agreement shall be limited to the value of the Agreement during the then current term. In any event, damages shall be further limited as provided in N.C.G.S. 143B-1350(h1).

c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

d) For delays in the first provision of the Services, Vendor shall have no liability unless the agreed provision date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:

- i) To recover direct costs attributable to Vendor's delay, and
- ii) To cancel the order without incurring cancellation charges.

Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

**9. SUPPORT AND MAINTENANCE:** Vendor will provide to the State the same Support Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified in this Agreement will be provided by the Vendor to certain State users for the fees or costs as set forth in this Agreement or in an SLA.

**10. MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other customers, and if the State has paid all applicable fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of

either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

**11. TRANSITION PERIOD:**

a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").

b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.

c) During the Transition Period, Services access shall continue to be made available to the State without alteration.

d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Exclusive Remedies and Limitation of Liability provisions above.

e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.

f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

**12. TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

**13. TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

**14. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1030, or other provision of law.

**15. AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in

this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to terminate any Services provided to the Agency under this Agreement and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**16. PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Services, whichever is later. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.

- a) Upon Vendor's written request of not less than 30 days and approval by the State, the State may:
  - (1) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - (2) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
  - (3) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.

- b) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor shall be provided to the State before any related license fees or costs may be billed to the State.

- c) An undisputed invoice is an invoice for which the State and/or Agency has not disputed the invoice in writing sent to the Vendor on the grounds of an invoice error within thirty (30) days from the invoice date, unless the State and/or Agency requests more time for review of the invoice. Upon Vendor's receipt of notice that the State and/or Purchasing State Agency disputes an invoice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Agency is not required to pay the Vendor for any goods and/or services provided without a written purchase order from the appropriate Agency. In addition, all Services provided must meet all terms, conditions, and specifications of the Agreement and purchase order and be accepted as satisfactory by the Agency before payment will be issued.

**17. ACCEPTANCE CRITERIA:** Acceptance testing is required for all Vendor Services unless provided otherwise in the solicitation documents. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. In the event acceptance of Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following provision of any Service provided by Vendor if it is not acceptable. The notice shall specify in reasonable detail the reason(s) the Service is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for testing of Services. If the Service is not acceptable to the

State, the State may terminate this Agreement for convenience as provided in Paragraph 30 c) ii) without liability for any costs or expenses associated with the Service.

18. **CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate information, Services, or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL.**” By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

#### 19. **SECURITY OF STATE DATA:**

a) All materials, including software, Data, information and documentation provided by the State to the Vendor during the performance or provision of Services pursuant to this Agreement is the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall remain the property of the Vendor and shall be provided to the State as part of the Services.

b) The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.

c) Protection of Personal Identifying Information. Vendor acknowledges its responsibility for securing personal identifying information collected by the State and stored in any Vendor site or other Vendor housing systems, including but not limited to computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the Services. Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain security of personal identifying information; provide reasonable care and efforts to detect fraudulent activity involving personal identifying information; and promptly notify the Agency of any breaches of security involving personal identifying information.



d) Family Educational Rights and Privacy Act: Student educational records are subject to 20 U.S.C. 1232g, Family Educational Rights and Privacy Act (FERPA). The Vendor shall ensure that the Vendor and Vendor's Services fully complies with FERPA and every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The Vendor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this Agreement.

e) Vendor will provide and maintain secure backup of the State Data. Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. If requested by the State, the Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.

f) Vendor shall certify to the State:

i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;

ii) That the Services will comply with the following:

(1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual;

(2) Privacy provisions of the Federal Privacy Act of 1974;

(3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);

(4) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and

(5) Applicable industry standards and guidelines, including but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.

(6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1341 and -1342.

g) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

- h) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of this Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Contract Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- i) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of this Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. In the event that Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of this Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- j) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- k) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- l) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- m) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- n) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and

also in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:

- 1) The scale and quantity of the State Data loss;
- 2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
- 3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
- 4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

Vendor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.

- o) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 19) o), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- p) The State requires cloud service providers (CSPs) to provide, on an annual basis, a security/risk assessment report. CSPs will utilize a Third-Party Assessment Agency/Organization to perform the assessment of the cloud service provider's security controls to determine the extent to which security controls are implemented correctly, operate as intended, and is in compliance with the Statewide Information Security Manual. Assessments will be conducted using industry best practice certification, e.g. SOC 2 Type 2 or NIST Risk Management Framework (RMF). Assessment reports provided, must be with 1 year of completion date in order to satisfy this requirement. Re-assessments will occur annually or when a significant change to the system's security posture is made. The State will ensure that supported agency's security staff is available for consultation during these processes. Identified gaps between required Security Control Baselines and the contractor's implementation as documented in the Security Assessment Report shall be tracked by the Vendor for mitigation in a Plan of Action and Milestones (POA&M) document. Vendor will remediate within an agreed-upon timeline any material weaknesses in the Vendor's security controls identified in such report that are identified as a reason for the auditor to issue such report as "qualified" or "adverse", and Vendor will use commercially reasonable efforts to remediate any other material weaknesses identified in such report.

**20. ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C. General Statute 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by the State, if in the State's

opinion, such requirement is imposed by federal or state law or regulation.

**21. ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. A consolidation, acquisition, or merger that does not include an assignment of this Agreement or its obligations hereunder (for purposes of this Agreement, a "Permitted Transaction") is permitted. Vendor shall provide reasonable notice of not less than thirty (30) days after any Permitted Transaction that occurs more than ninety (90) days prior to the expiration of this Agreement. Vendor shall provide reasonable notice promptly after any Permitted Transaction that occurs less than ninety (90) days prior to the expiration of this Agreement. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

**22. NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

**23. TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

**24. AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.

**25. TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

**26. GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

**27. DEFAULT:**

- a) In the event any Service provided by the Vendor fails to conform to any material requirement of the specifications (other than the performance guarantees described in Paragraph 4 and Paragraph 6, which the Parties acknowledge are subject to the remedies set forth in Paragraph 4, Paragraph 6, and the SLA), notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the SLA requirements, the State may terminate as set forth in Section 30. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.
- b) If Vendor fails to deliver Services within the times required by this Agreement's SLA, the State may

provide written notice of said failure to Vendor, and by such notice require payment of a penalty. N.C.G.S. § 143B-1340(f); 09 NCAC 06B.1207.

- c) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

**28. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**29. COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**30. TERMINATION:** Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Agreement by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 27), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following
  - i) Termination for Cause: In the event the Services furnished by the Vendor during performance fails to conform to any material specification or requirement of the Agreement (other than the performance guarantees described in Paragraph 4 and Paragraph 6, which the Parties acknowledge are subject to the remedies set forth in Paragraph, Paragraph 6, and the SLA), and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for 1) refunding any pre-paid fees (on a pro-rated basis) for the remaining term of the Contract, 2) refunding any fees paid for the Contract period during which such failure occurred, and 3) performing the Transition services set forth in Paragraph 11 at no cost to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services provided and performed in conformance with the Agreement. In the event the Contract is terminated for the convenience of the State the Agency will pay for all Services and work provided and performed in conformance with the Agreement up to the date of termination.

**31. DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes

informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the parties within thirty (30) days after delivery of notice, either party may elect to exercise any other remedies available under this Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**32. SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**33. INDEPENDENT CONTRACTORS.** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Agreement shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**34. FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**35. ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. *Subparagraphs a) and b) may apply only to any goods procured herein, but not to Services.*

a) Reserved.

b) Reserved.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

**2. The State offers the following with regards to the Vendor's Customer Terms and Conditions attached to Vendor's response to this RFP:**

The Parties agree that the Vendor's Customer Terms and Conditions, attached to Vendor's response to this RFP, is deleted in its entirety and replaced with the following:

**CUSTOMER TERMS & CONDITIONS**

1. **Scope.** This Customer Terms and Conditions document ("Agreement") is between Amplify Education, Inc. ("***Amplify***") and the North Carolina Department of Public Instruction ("Customer"). It is an attachment to BAFO Number 1 to RFP No. 40-IT00107-16 (the "RFP") and is governed by the terms and conditions agreed by the parties pursuant to the RFP, as modified by BAFO Number 1. Amplify will deliver one or more of the following products or services, as specified in the RFP: assessment software and content, digital and print curriculum and instructional materials, hardware devices, and professional development materials and services (collectively, the "***Products***").
2. **License.** Subject to the terms and conditions of the RFP and this Agreement, Amplify grants to Customer a non-exclusive, non-transferable, non-sublicenseable license to access and use, and permit Authorized Users to access and use the Products solely in the U.S. during the Term for the number of Authorized Users agreed between Amplify and Customer pursuant to the RFP and for whom Customer has paid the applicable fees to Amplify. "***Authorized User***" means an individual teacher or other personnel employed by Customer or End Users (as defined in the RFP), or an individual student registered for instruction at Customer's or an End User's school, whom Customer permits to access and use the Products subject to the terms and conditions of the RFP and this Agreement, and solely while such individual is so employed or so registered. Each Authorized User's access and use of the Products shall be subject to the terms and conditions of the RFP, in addition to the terms and conditions of this Agreement, and violations of such terms may result in suspension or termination of the applicable account.
3. **Restrictions.** Customer shall access and use the Products solely for non-commercial instructional and administrative purposes of Customer's school. Further, Customer shall not, except as expressly authorized or directed by Amplify: (a) copy, modify, translate, distribute, disclose or create derivative works based on the contents of, or sell, the Products, or any part thereof; (b) decompile, disassemble or otherwise reverse engineer the Products or otherwise use the Products to develop functionally similar products or services; (c) modify, alter or delete any of the copyright, trademark, or other proprietary notices in or on the Products; (d) rent, lease or lend the Products or use the Products for the benefit of any third party; (e) avoid, circumvent or disable any security or digital rights management device, procedure, protocol or mechanism in the Products; or (f) permit any Authorized User or third party to do any of the foregoing. Customer also agrees that any works created in violation of this section are derivative works, and, as such, Customer agrees to assign, and hereby assigns, all right, title and interest therein to Amplify. The Products and derivatives thereof may be subject to export laws and regulations of the U.S. and other jurisdictions. Customer may not export any Product outside of the U.S. Further, Customer will not permit Authorized Users to access or use any Product in a U.S.- embargoed country or otherwise in violation of any U.S. export law or regulation. The software and associated documentation portions of the Products are "commercial items" (as defined at 48 CFR 2.101), comprising "commercial computer software" and "commercial computer software documentation," as those terms are used in 48 CFR 12.212. Accordingly, if Customer is the U.S. Government or its contractor, Customer will receive only those rights set forth in this Agreement in

accordance with 48 CFR 227.7201-227.7204 (for Department of Defense and their contractors) or 48 CFR 12.212 (for other U.S. Government licensees and their contractors).

4. **Reservation of Rights**. SUBSCRIPTION PRODUCTS ARE LICENSED, NOT SOLD. Subject to the limited rights expressly granted hereunder, all rights, title and interest in and to all Products, including all related IP Rights, are and shall remain the sole and exclusive property of Amplify or its third-party licensors. “***IP Rights***” means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide. Customer shall notify Amplify of any violation of Amplify’s IP Rights in the Products of which Customer has actual knowledge, and shall reasonably assist Amplify as necessary to remedy any such violation. Amplify Products are protected by patents (see <http://www.amplify.com/virtual-patent-marking>).

5. **Payments**. Intentionally Omitted.

6. **Account Information**. For subscription Products, the authentication of Authorized Users is based in part upon information supplied by Customer or Authorized Users, as applicable. Customer will and will cause its Authorized Users to (a) provide accurate information to Amplify or a third-party authentication service as applicable, and promptly report any changes to such information, (b) not share or allow others to use their account, (c) maintain the confidentiality and security of their account information, and (d) use the Products solely via such authorized accounts. Customer agrees to notify Amplify immediately of any unauthorized use of its or its Authorized Users’ accounts or related authentication information of which Customer has actual knowledge. Amplify will not be responsible for any losses arising out of the unauthorized use of accounts created by or for Customer and its Authorized Users.

7. **Confidentiality**. Intentionally Omitted.

8. **Student Data**. The parties acknowledge and agree that Customer is subject to federal and local laws relating to the protection of personally identifiable information of students (“***PII***”), including the Family Educational Rights and Privacy Act (“***FERPA***”), and that Amplify is obtaining such PII for the purpose of providing the Products hereunder. Subject to the terms and conditions of the RFP and this Agreement, Amplify will not take any action to cause Customer to be out of compliance with FERPA or other applicable North Carolina or Federal laws relating to PII. The terms and conditions of the RFP will govern collection, use and disclosure of information collected or stored on behalf of Customer under this Agreement, provided that such collection, use, and disclosure is not otherwise prohibited by North Carolina or Federal law.

9. **Customer Materials**. Customer represents, warrants and covenants that it has all the necessary rights, including consents and IP Rights, in connection with any data, information, content and other materials provided to or collected by Amplify on behalf of Customer or its Authorized Users using the Products or otherwise in connection with this Agreement (“***Customer Materials***”), and that Amplify has the right to use such Customer Materials as contemplated hereunder or for any other purposes required by Customer. Customer is solely responsible for the accuracy, integrity, completeness, quality, legality and safety of such Customer Materials. Customer is responsible for meeting hardware, software, telecommunications and other requirements listed at <http://www.amplify.com/customer-requirements>.

10. **Warranty Disclaimer**. Intentionally Omitted.

11. **Limitation of Liability**. Intentionally Omitted.

12. **Term; Termination**. Intentionally Omitted.

13. **Miscellaneous**. This Agreement may not be modified except in writing signed by both parties. All defined terms in this Agreement shall apply to their singular and plural forms, as applicable. The word “including” means “including without limitation.” This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns. The parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute



one party as an employee, agent, joint venture partner or servant of another. Each party is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection herewith. If one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable at law, such provisions shall be construed by the appropriate judicial body to limit or reduce such provision or provisions so as to be enforceable to the maximum extent compatible with applicable law.

### **3. The State offers the following with regards to the Vendor's Service Level Agreement attached to Vendor's response to the RFP:**

The Parties agree that the Vendor's Service Level Agreement, attached to Vendor's response to this RFP, is deleted in its entirety and replaced with the following. For clarity, the Parties agree that the following Service Level Agreement replaces and supersedes both the Vendor's Service Level Agreement attached to Vendor's response to the RFP and the Vendor's Service Level Agreement attached to Vendor's response to BAFO Number 2 to this RFP.

#### **RtAD CONTRACTOR SERVICE LEVEL AGREEMENT**

This Service Level Agreement (SLA) describes the terms of customer and technical support to be provided under that certain agreement (the "Agreement") between North Carolina DPI (the "State"), and Amplify Education, Inc. ("Contractor"), and the Statement of Work (or "SOW") to which this Service Level Agreement is attached, if any.

**Contractor Platform Availability:** The Contractor RtAD Platform will be available for use by the State and End Users (as "End Users" is defined in RFP No. 40-IT00107-16) at a minimum as defined in the following two (2) Service Windows for monitoring and reporting the SLA metrics of availability uptime percentage and calculating service credits for each calendar month that this SLA and the Agreement are in effect.

**Service Window #1:** 7:00 AM to 6:00 PM EST with a 99.9% RtAD Platform availability Monday through Friday excluding any Maintenance Windows pre-approved by NCDPI.

**Service Window #2:** 6:00:01 PM to 6:59:59 AM EST Monday –Thursday and 6:00:01 PM Friday to 6:59:59 AM EST Monday with a 99.5% RtAD Platform availability for this Service Window excluding any Maintenance Windows pre-approved by NCDPI. NCDPI approved scheduled recurring Maintenance Windows shall only take place during Service Window #2. Unless otherwise agreed by the parties, such scheduled recurring Maintenance Windows shall be 9-11 pm Tuesdays and Fridays.

**Unscheduled Downtime:** Is defined as any event that causes the RtAD Platform to be unavailable for use by the State and its authorized users for less than the following uptime specification listed in the Service Window tables below.

#### **Service Window #1**

<b>SYSTEM UPTIME</b>	<b>CREDIT PERCENTAGE</b>	<b>APPROXIMATE MONTHLY UNSCHEDULED DOWNTIME (MINUTES)</b>
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$\geq 99.9\%$	0%	14 minutes 21 Seconds
$99.9\% > \text{ and } \geq 99.8\%$	2.5%	14 min 22 sec – 28 min 42 sec
$99.8\% > \text{ and } 99.7\%$	5%	28 min 43 sec – 43 Minutes 3 sec
$99.7\% > \text{ and } \geq 99.5\%$	8%	43 min 4 sec – 1 hour 11 min 45 sec
$99.5\% >$	10%	$\geq 1\text{hour } 11 \text{ min } 46 \text{ sec}$

**Service Window #2**

SYSTEM UPTIME	CREDIT PERCENTAGE	APPROXIMATE MONTHLY UNSCHEDULED DOWNTIME (MINUTES)
$\geq 99.5\%$	0%	2 hours 27minutes 24 seconds
$99.5\% > \text{ and } \geq 99.4\%$	2.5%	>2 hrs. 27 min 25 sec – 2 hours 56 min 53 sec
$99.4\% > \text{ and } \geq 99.1\%$	3.5%	>2 hours 56 min 54 sec – 4 hours 25 min 19 sec
$99.1\% >$	5%	$\geq 4 \text{ hours } 25 \text{ min } 20 \text{ sec}$

**Account Credit for RtAD Platform Unscheduled Downtime:** In the event that the monthly RtAD System uptimes identified in the Service Window tables above is not met for any calendar month during the term of the Agreement, the State shall be entitled to an account credit in accordance with the tables set forth immediately above. All account credits shall be calculated by multiplying the RtAD Monthly Subscription Fee by the credit percentage that corresponds to the calculated Unscheduled Downtime.

**Example:** For Service Window 1, if the Unscheduled Downtime for Month “X” is 29 minutes and the RtAD Monthly subscription Fee is \$527,714 (\$6,332,573/12mths), then the NCDPI account credit to the State for Month “X” is \$26,386. ( $\$527,714 \times .05$ ).

**Maximum Credit:** The State acknowledges and agrees that the account credits represented above are liquidated damages and represent the State’s sole remedy for the Contractors failure to meet the service levels set forth herein; and the aggregate amount of account credits, for all instances where the Contractor, in any given month does not meet the services levels set forth in Service Windows 1 and 2 above shall not exceed 15% of the Contractors monthly subscription Fee in total.

**Contractor RtAD Unscheduled Outage Reporting:** The Contractor shall provide access to performance monitoring reports and upon request, will provide a report reflecting any unscheduled outages of the RtAD subscription service within 10 business days at the conclusion of the previous month. The report shall

include the Outage Date and Time, outage description, duration, and remedy.

**Excluded Events:** There shall be no excluded events from the Contractor RtAD platform with the exception of events beyond the Contractor and Contractor's subcontractors' and representatives' reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. The Contractor shall establish industry standard RtAD system redundancy to ensure maximum RtAD platform reliability and minimize Force Majeure conditions. Force Majeure reported Contractor outages shall be accompanied by validated evidence to support the event. The Contractor shall be bonded and insured for severe weather related outage events. The Contractor shall make all reasonable efforts to protect RtAD State data and return the RtAD systems to operational status promptly in response to a Force Majeure event.

### **Problem Identification and Resolution Response Times:**

#### **Problem Resolution**

In general, during the term of the Agreement, Contractor will use commercially reasonable efforts to provide problem resolution and technical support on any and all questions that the State has regarding the Services or Deliverables that Contractor is obligated to provide under the Agreement. As used herein, a "**High Priority**" or "**Priority 1**" problem is any systemic and material failure of the Contractor Platform to operate in accordance with its documentation that substantially impedes assessment administration, scoring or reporting. As used herein, a "**Normal Priority**" problem is any failure of the Contractor Platform to operate substantially as described in its documentation. Contractor shall provide resolution to all problems identified to the Support Number as follows:

**Normal Priority problems:** The Contractor will provide a preliminary status update and, to the extent practical, a preliminary remedy to the State not later than the next business day after the problem is initially logged with technical support. Contractor will use commercially reasonable efforts to work diligently to correct (or provide a reasonable work-around for) any Normal Priority problems that are not immediately resolvable as soon as reasonably possible in light of their severity and overall impact on the State's use of the Contractor Platform.

**High Priority problems:** The Contractor will provide a preliminary update and, to the extent practical, a preliminary remedy to the State within one (1) hour after the High Priority problem is initially logged with technical support. Contractor will promptly assign appropriate resources to correct (or provide a reasonable work-around for) any High Priority problems that are not immediately resolvable in a highly expedited manner.

Without limiting the generality of the foregoing, for all problems not resolved within designated time frames, Contractor will use commercially reasonable efforts to provide the State with additional resources as necessary for expedient problem resolution and timely follow-up.

Contractor will be responsible for delays, High Priority, Normal Priority or other problems or failures that arise with the exception of Excluded Events (as defined above). The State also

acknowledges and agrees that Contactor's ability to resolve any problems hereunder on a timely basis is dependent upon the State's cooperation in assisting with identifying, reporting, and replicating functionality problems hereunder, and providing other cooperation as may reasonably be necessary.

Additionally, the State agrees that the Contractor and the State shall work together in good faith to undertake a root cause analysis to ascertain the source of the issue, and further work together in good faith and offer reasonable cooperation in an attempt to resolve any such issues or disputes relating thereto.

4. The North Carolina Department of Public Instruction has an existing contract with the Vendor that terminates on August 30, 2016. In the event that the State awards this RFP to Vendor, the term of the resulting contract will overlap with the term of the existing contract. The State therefore requests that the Vendor provide the State with a credit for each calendar day that the term of the contract resulting from this RFP overlaps with the term of the existing contract. This per day credit will be multiplied by the number of days remaining on the existing contract. The total amount of the credits shall then be deducted from the first invoice submitted from the Vendor to the State during the term of the contract awarded pursuant to this RFP, if any. Please provide the amount of the credit below:

\$ 22,691.80 per calendar day.

5. The State encourages the vendor to supply more competitive prices. Vendor should submit its most competitive prices starting on [page \[22\]](#) of this request for BAFO 3.

**PLEASE NOTE THE FOLLOWING:**

- 1) NCDPI is requesting a cost proposal without the DIBELS Deep. Please incorporate this information, when completing the Read to Achieve Diagnostic Software as a Service Cost Template below.
- 2) Exclude optional terms from the overall contract cost and provide them separately.
- 3) Clarify the final price is inclusive of the official links to guide teachers in instructions based on the MSV analysis (as agreed to during BAFO 01).4) Lastly, provide a payment schedule using the following as a guide. Refer to section IV (2) of the proposal for further details:
  1. Recurring Quarterly Operational Cost
  2. Deliverable/Milestones based payment schedule

**Section IV. Cost Proposal**

- 1) The Vendor must submit costs (inserting as many rows as necessary) in the following Cost Response Form:

**Cost Offer (450,000 or more students)**

<b>Cost Component</b>	<b>One-Time Costs</b>	<b>Describe Cost Basis</b>		
Project management	\$0.00	Included in subscription fee below.		
Customization required or proposed addressing specification	\$0.00	Included in subscription fee below.		
Technical and user documentation	\$0.00	Included in subscription fee below.		
Installation/conversion/integration/transition costs	\$0.00	Included in subscription fee below.		
Training including training materials	\$0.00	Included in subscription fee below.		
Other (describe)	\$0.00			
<i>Total One-Time Costs</i>	\$0.00			
<b>Cost Component</b>	<b>Recurring Costs</b>			<b>Describe Cost Basis</b>
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	
Subscription fees or costs	\$6,332,573	\$6,332,573	\$6,332,573	\$13 annual per student license fee for 450,000 students or more. The summary cost in each year assumes purchase of 487,121 licenses in each year. Final cost will be based on actual number of students.
Enhancement costs	\$	\$	\$	
Technical support-customer service	\$	\$	\$	
Other (describe)	\$	\$	\$	
<i>Total Recurring Costs</i>	\$6,332,573	\$6,332,573	\$6,332,573	
				<b>Contract Total</b>

<i>Grand Total – Entire Contract (including Optional Years)</i>	<b>\$18,997,719</b>
*Provide Costs separately for any optional/desired service features if not already included in the offered costs above.	
\$1,100,000** -Supplemental kit price. See notes below.	

### Notes

\*\*This cost reflects the purchase of additional texts for the existing kits that are already used across the State, as described in Section D.2.3.1 (p. 195) of the proposal. Please note that this extension of the book set was based on feedback that we have received from North Carolina educators and administrators. If NCDPI wishes to modify this plan (such as reduce the number of books per set or adjust the total number of sets purchased for the districts) or remove the extension, we would be happy to adjust the cost accordingly or remove it entirely.

This supplement includes:

- Additional nonfiction texts at select levels; and
- Texts at upper levels that are not covered at all by the existing kits (Note that, since the upper level texts will be required less frequently, the texts will be allocated to Grade 3 classrooms and may be shared with teachers at lower grade levels in the school).

### Payment Plan Proposal

#### Year 1

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,691,344	9/30/2016
Payment 2	\$1,213,743	12/30/2016
Payment 3	\$1,213,743	3/30/2017
Payment 4	\$1,213,743	6/30/2017

#### Year 2

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,691,344	9/30/2017
Payment 2	\$1,213,743	12/30/2017
Payment 3	\$1,213,743	3/30/2018
Payment 4	\$1,213,743	6/30/2018

#### Year 3

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,691,344	9/30/2018
Payment 2	\$1,213,743	12/30/2018
Payment 3	\$1,213,743	3/30/2019
Payment 4	\$1,213,743	6/30/2019

**Alternative Cost Response 1 (250,000 to 449,999 students)**

<b>Cost Component</b>	<b>One-Time Costs</b>	<b>Describe Cost Basis</b>		
Project management	\$0.00	Included in subscription fee below.		
Customization required or proposed addressing specification	\$0.00	Included in subscription fee below.		
Technical and user documentation	\$0.00	Included in subscription fee below.		
Installation/conversion/integration/transition costs	\$0.00	Included in subscription fee below.		
Training including training materials	\$0.00	Included in subscription fee below.		
Other (describe)	\$0.00			
<i>Total One-Time Costs</i>	\$0.00			
<b>Cost Component</b>	<b>Recurring Costs</b>			<b>Describe Cost Basis</b>
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	
Subscription fees or costs	\$6,637,485.25	\$6,637,485.25	\$6,637,485.25	\$14.75 annual per student license fee for up to 449,999 students. The summary cost in each year assumes purchase of 449,999 licenses in each year. Final cost will be based on actual number of students.
Enhancement costs	\$	\$	\$	
Technical support-customer service	\$	\$	\$	
Other (describe)	\$	\$	\$	
<i>Total Recurring Costs</i>	\$6,637,485.25	\$6,637,485.25	\$6,637,485.25	
				<b>Contract Total</b>

<i>Grand Total – Entire Contract (including Optional Years)</i>	\$19,912,455.75
*Provide Costs separately for any optional/desired service features if not already included in the offered costs above.	
\$1,015,884** - Supplemental kit price. See notes below.	

## Notes

\*\*This cost reflects the purchase of additional texts for the existing kits that are already used across the State, as described in Section D.2.3.1 (p. 195) of the proposal. Please note that this extension of the book set was based on feedback that we have received from North Carolina educators and administrators. If NCDPI wishes to modify this plan (such as reduce the number of books per set or adjust the total number of sets purchased for the districts) or remove the extension, we would be happy to adjust the cost accordingly or remove it entirely.

This supplement includes:

- Additional nonfiction texts at select levels; and
- Texts at upper levels that are not covered at all by the existing kits (Note that, since the upper level texts will be required less frequently, the texts will be allocated to Grade 3 classrooms and may be shared with teachers at lower grade levels in the school).

## Payment Plan Proposal

### Year 1

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,820,931	9/30/2016
Payment 2	\$1,272,185	12/30/2016
Payment 3	\$1,272,185	3/30/2017
Payment 4	\$1,272,185	6/30/2017

### Year 2

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,820,931	9/30/2017
Payment 2	\$1,272,185	12/30/2017
Payment 3	\$1,272,185	3/30/2018
Payment 4	\$1,272,185	6/30/2018

### Year 3

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$2,820,931	9/30/2018
Payment 2	\$1,272,185	12/30/2018
Payment 3	\$1,272,185	3/30/2019
Payment 4	\$1,272,185	6/30/2019



**Alternative Cost Response #2 (1 to 249,999 students)**

<b>Cost Component</b>	<b>One-Time Costs</b>	<b>Describe Cost Basis</b>		
Project management	\$0.00	Included in subscription fee below.		
Customization required or proposed addressing specification	\$0.00	Included in subscription fee below.		
Technical and user documentation	\$0.00	Included in subscription fee below.		
Installation/conversion/integration / transition costs	\$0.00	Included in subscription fee below.		
Training including training materials	\$0.00	Included in subscription fee below.		
Other (describe)	\$0.00			
<i>Total One-Time Costs</i>	\$0.00			
<b>Cost Component</b>	<b>Recurring Costs</b>			<b>Describe Cost Basis</b>
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	
Subscription fees or costs	\$3,937,484.25	\$3,937,484.25	\$3,937,484.25	\$15.75 annual per student license fee for up to 249,999 students. The summary cost in each year assumes purchase of 249,999 licenses in each year. Final cost will be based on actual number of students.
Enhancement costs	\$	\$	\$	
Technical support-customer service	\$	\$	\$	
Other (describe)	\$	\$	\$	
<i>Total Recurring Costs</i>	\$3,937,484.25	\$3,937,484.25	\$3,937,484.25	

	<b>Contract Total</b>
<i>Grand Total – Entire Contract (including Optional Years)</i>	\$11,812,452.75
*Provide Costs separately for any optional/desired service features if not already included in the offered costs above.	
\$564,379** - Supplemental kit price. See notes below.	

### Notes

\*\*This cost reflects the purchase of additional texts for the existing kits that are already used across the State, as described in Section D.2.3.1 (p. 195) of the proposal. Please note that this extension of the book set was based on feedback that we have received from North Carolina educators and administrators. If NCDPI wishes to modify this plan (such as reduce the number of books per set or adjust the total number of sets purchased for the districts) or remove the extension, we would be happy to adjust the cost accordingly or remove it entirely.

This supplement includes:

- Additional nonfiction texts at select levels; and
- Texts at upper levels that are not covered at all by the existing kits (Note that, since the upper level texts will be required less frequently, the texts will be allocated to Grade 3 classrooms and may be shared with teachers at lower grade levels in the school).

### Payment Plan Proposal

#### Year 1

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$1,673,431	9/30/2016
Payment 2	\$754,684	12/30/2016
Payment 3	\$754,684	3/30/2017
Payment 4	\$754,684	6/30/2017

#### Year 2

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$1,673,431	9/30/2017
Payment 2	\$754,684	12/30/2017
Payment 3	\$754,684	3/30/2018
Payment 4	\$754,684	6/30/2018

#### Year 3

Quarterly Payment	Amount	Payment Due Date
Payment 1	\$1,673,431	9/30/2018
Payment 2	\$754,684	12/30/2018
Payment 3	\$754,684	3/30/2019
Payment 4	\$754,684	6/30/2019